MEMORIAL OF MERCHANTS BALTIMORE 1806

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THE

# MEMORIAL

OF THE

## *MERCHANTS & TRADERS*

OF THE

## CITY OF BALTIMORE.

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*To the* PRESIDENT *of the* UNITED STATES, *and the* SENATE *and* HOUSE *of* REPRESENTATIVES *of the* UNITED STATES *of* AMERICA, *in Congress assembled*—

*The* MEMORIAL *of the* MERCHANTS *and* TRADERS *of the City of Baltimore.*

YOUR Memorialists beg leave respectfully to submit to your consideration the following statement and reflections, produced by a situation of our public affairs in a high degree critical and perilous, and peculiarly affecting the commerce of their country :——

IN the early part of the late war between Great-Britain and France, the former undertook to prohibit neutral nations from all trade whatsoever with the colonies of the latter. This exorbitant pretension was not long persisted in. It was soon qualified in favor of a direct trade between the United States and these colonies, and some years afterwards was farther relaxed in favor of European neutrals. The United States being thus admitted, by the express acknow-

ledgment of Great-Britain, to a direct trade, without limit, between their own ports and the colonies of the opposite belligerents, another trade naturally and necessarily grew out of it, or rather formed one of its principal objects and inducements. The surplus of the colonial produce, beyond our own consumption, imported here, was to be carried elsewhere for a market, and it was accordingly carried to Europe, sometimes by the original importer, sometimes by other American merchants, either in the vessels in which the importation was made, or in others. In the course of this traffic it was understood to be the sense of Great-Britain, and was explicitly declared by her courts of prize, that, although she had not expressly allowed to the merchants of the United States, by the letter of her relaxations, an immediate trade between the colonies of her enemies and the markets of Europe, yet that a circuitous trade to Europe, in the production of those colonies, was unexceptionable, and that nothing more was necessary to make it so, than that the continuity of the voyage should be broken by an entry, and payment of duties, and the landing of the colonial cargo in the United States. During the greater part of the late war, and the first years of the present, this trade was securely prosecuted by our merchants, in the form

which Great-Britain had thus thought fit to give to it. The modification, of a traffic in itself entitled to be free, was submitted to on our part, without repining, because it presented a clear and definite rule of conduct, which, although unauthorised in the light of a restriction, was not greatly inconvenient in its practical operation; and your Memorialists entertained a confident hope, that, while on the one hand they sought no change of system, by which the assumption of Great-Britain to impose terms, however mild in their character and effect, upon their lawful commerce, should be repelled;—on the other hand it would not be desired that the state of things, which Great-Britain had herself prescribed, and which use and habit had rendered familiar and intelligible to all, should be disturbed by oppressive innovations; far less that these innovations should, by a tyrannical retrospection, be made to justify the seizure and confiscation of their property, committed to the high seas, under the protection of the existing rule, and without warning of the intended change. In this their just hope, your Memorialists have been fatally disappointed. Their vessels and effects, to a large amount, have lately been captured by the commissioned cruisers of Great-Britain, upon the foundation of new principles, suddenly invented and applied to

this habitual traffic, and suggested and promulgated, for the first time, by sentences of condemnation, by which unavoidable ignorance has been considered as criminal, and an honorable confidence in the justice of a friendly nation pursued with penalty and forfeiture.

Your Memorialists are in no situation to state the precise nature of the rules to which their most important interests have thus been sacrificed; and it is not the least of their complaints against them that they are undefined and undefinable, equivocal in their form, and the fit instruments of oppression, by reason of their ambiguity.

Your Memorialists know that the circumstances which have heretofore been admitted to give legality to their trade, in colonial productions, with their European friends, protect it no longer; but they have not yet been told, and are not soon likely to learn, what other circumstances will be suffered to produce that consequence. It is supposed to have been judicially declared, in general, that a voyage undertaken for the purpose of bringing into the United States the produce of the belligerent colonies, purchased by American citizens, shall, if it appears to be intended that this produce shall ultimately go on to Europe, and an attempt is

actually made to re-export and send it thither, be considered, on account of that intention, as a direct voyage to Europe, and therefore illegal, notwithstanding any temporary interruption or termination of it in the United States.

Your Memorialists will not here stop to enquire, upon what ground of law or reason the same act is held to be legal, when commenced with one intention, and illegal when undertaken with another; but they object in the strongest terms against this new criterion of legality, because of its inevitable tendency to injustice, because of its peculiar capacity to embarrass with seizure, and to ruin with confiscation, the whole of our trade with Europe in the surplus of our colonial importations. The enquiry which the late system indicated was short and simple, and precluded error on all sides; but the new refinement substitutes in its place a vast field of speculation, overshawdowed with doubt and uncertainty, and of which the faint and shifting boundaries can never be distinctly known. Intention as to the object of our colonial voyages may be inferred from numerous circumstances more or less conclusive. To anticipate them all is obviously impracticable, and of course to guard against the inferences in this respect,

which British captors and British courts may be disposed to draw, will be impossible. Our property is, therefore, menaced by a great and formidable danger, which there are no means of eluding; for, even if it should chance to escape the condemnation which this pernicious novelty prepares for it, the wound inflicted upon our commerce, by arrestations on suspicion and detentions for adjudication, will be deep and fatal. The efforts of our merchants will be checked and discouraged by more than ordinary inquisitions; our best concerted enterprises broken up, without the hope of retribution, or even reimbursement for actual costs, upon the footing of an intention arbitrarily imputed; and the only alternative which will be presented to our choice, will be either to refrain at once from a traffic, which enriches our country, while it benefits ourselves, or to see it wasted and in the end destroyed by a noxious scheme of maritime depredation.

Your Memorialists are the more alarmed by this departure from a plain and settled rule, in favor of a pliant and mysterious doctrine, so eminently suited to the accomplishment of the worst purposes of commercial jealousy, because the injurious and vexatious qualities of the substituted rule must

have been known to those who introduced it, and because if these qualities did not recommend it to adoption, it is difficult to conceive why it was adopted at all. If it is meant that our trade to Europe shall, notwithstanding this rule, be allowed to continue without being subjected to extraordinary difficulties, operating as actual reductions, and mischievous restraints; if it is meant that a few facts, known and comprehended, shall, as heretofore, form a standard by which the lawfulness of our European voyages may be unequivocally ascertained; if a wide range has not been designed for the enquiry after intention, and a real effect expected from that enquiry; if, in a word, the late regulation has not been supposed to be capable of bearing upon our trade in a manner new and important, we should hardly have now been called upon to remonstrate against a change. It is not pretended that the rule, now enforced against us, is levelled against any practice, to which we may be supposed to have lent ourselves, of disguising as our own the property of the enemies of Great-Britain. That is not its object; and, if it were, we are enabled to assert, solemnly and confidently, that our conduct has afforded no ground for the injurious suspicion which such an object would imply. The view is

professedly to regulate and affect our traffic in articles fairly purchased by us from others; —and if the consequences to that traffic were not intended to be serious, extensive and permanent, your Memorialists search in vain for the motive, by which, a state, in amity with our own, and moreover connected with it by the ties of a common interest, to which many considerations seem to give peculiar strength, has been induced to indulge in a paroxysm of capricious aggression upon our rights, by which it dishonors itself, without promoting any of those great interests, for which an enlightened nation may fairly be solicitous, and which only a steady regard for justice can ultimately secure. When we see a powerful state, in possession of a commerce of which the world affords no examples, endeavoring to interpolate into the laws of nations casuistical nicieties, and wayward distinctions, which forbid a citizen of another independent commercial country, to export from that country, what unquestionably belongs to him, only, because he imported it himself; and yet allow him to sell a right of exporting it to another—which, prohibit an end, because it arises out of *one* intention, but permit it when it arises out of *two*—which, dividing an act into stages, search into the mind for a correspondent division of it in the contem-

plation of its author, and determine its innocence or criminality accordingly—which, not denying that the property acquired in an authorised traffic by neutral nations from belligerents may become incorporated into the national stock, and under the shelter of its neutral character, thus superinduced, and still preserved, be afterwards transported to every quarter of the globe—reject the only epoch which can distinctly mark that incorporation, and point out none other in its place—which proposing to fix with accuracy and precision the line of demarcation, beyond which neutrals are trespassers upon the wide domain of belligerent rights, involve every thing in darkness and confusion;—there can be but one opinion as to the purpose which all this is to accomplish.

Your Memorialists have endeavored, with all that attention, which their natural anxiety was calculated to produce, to ascertain the various shapes which the doctrine in question is likely to assume in practice, but they have found it impossible to conjecture, in what way consistently with this doctrine, the excess of our imports from the belligerent colonies, can find their way to foreign markets. The landing of the cargo, and a compliance with all the forms and sanctions, upon which our revenue depends, will not so

terminate the voyage from the colonies, as that the articles may be immediately re-exported to Europe, by the original importer. But, if they cannot be exported immediately, what lapse of time will give them a title to be sent abroad? and if not by the original importer, how is he to devolve upon another, a power which he has not himself? and if by a sale he can communicate the power, by what evidence is the tranfer to be manifested, so as to furnish an answer to the ready accusation of fraud and evasion?

In proportion as this doctrine has developed itself, it has been found necessary to invent plausible qualifications, tending to conceal its real character from observation. It has accordingly been surmised that, notwithstanding the obstacles which it provides against the re-exportation of a colonial cargo, by the importer, such a re-exportation may perhaps be lawful. Attempts on his part to sell in the United States, without effect, (which must often happen) may, it is supposed, be sufficient to save him from the peril of the rule:—But, admitting it to be certain, instead of being barely *possible*, that these attempts would form any thing like security against final condemnation, it is still most material to ask, how they are to afford protection against seizure, by what docu-

ment they can be proved to the satisfaction of those to whom interest suggests doubts, and whom impunity encourages to act upon them? The formal transactions of the custom-house once deserted as a criterion, the cargo must be followed through private transfers, into the warehouses of individual merchants; and, when proofs have been prepared, with the utmost regularity, to establish those transfers, or the other facts, which may be deemed to be equivalent, they are still liable to be suspected, and will be suspected, as fictious and colorable, and capture will be the consequence.

For the loss and damage, which capture brings along with it, British courts of prize grant no adequate indemnity. Redress to *any* extent is difficult—to a *competent* extent impossible; and even the costs which an iniquitous seizure compels a neutral merchant to incur, in the defence of his violated rights, before their own tribunals, are seldom decreed and never paid.

Your Memorialists have thus far complained only of the recent abandonment, by Great-Britain, of a known rule, by which the oppressive character of an important principle of her maritime code, has, heretofore, been greatly mitigated. But, they

now beg leave to enter their solemn protest against the principle itself, as an arbitrary and unfounded pretension, by which the just liberty of neutral commerce is impaired and abridged, and may be wholly destroyed.

The reasons, upon which Great-Britain assumes to herself a right, to interdict to the independent nations of the earth, a commercial intercourse with the colonies of her enemies (out of the relaxation of which pretended right has arisen the distinction, in her courts, between an American trade, from the colonies to the United States, and from the same colonies to Europe,) will, we are confidently persuaded, be repelled with firmness and effect by our government.

It is said, by the advocates of this high belligerent claim, that neutral nations have no right to carry on with either of the parties at war, any other trade than they have actually enjoyed in time of peace.—This position forms the basis, upon which Great-Britain has, heretofore, rested her supposed title, to prevent altogether, or to modify at her discretion, the interposition of neutrals in the colony trade of her adversaries.

But, if we are called upon to admit the truth of this position, it seems reasonable that the converse of it should also be ad-

mitted ;—that war should not be allowed to disturb the customary trade of neutrals in peace ;—that the peace-traffic should, in every view, be held to be the measure of the war-traffic ;—and that, as, on the one hand, there can be no enlargement, on the other there shall be no restriction. What, however, is the fact? The first moment of hostilities annihilates the commerce of the nations at peace, in articles deemed contraband of war ;—the property of the belligerents can no longer be carried in neutral ships ; they are subject to visitation on the high seas ;—to harrassing and vexatious search ;—to detention for judicial enquiry ; —and to the peril of unjust confiscation.— They are shut out from their usual markets, not only by military enterprizes against particular places, carried on with a view to their reduction, but by a vast system of blockade, affecting, and closing up, the entire ports of a whole nation. Such have been the recent effects of an European war upon the trade of this neutral country ; and the prospect of the future affords no consolation for the past. The triumphant fleets of one of the contending powers cover the ocean ;—the navy of her enemies has fallen before her ;—the communication by sea, with France, and Spain, and Holland, seems to depend upon her will, and she asserts a right

to destroy it at her pleasure. She forbids us from transporting in our vessels, as in peace we could, the property of her enemies; enforces against us a rigorous list of contraband; dams up the great channels of our ordinary trade; abridges, trammels and obstructs what she permits us to prosecute; and then, refers us to our *accustomed traffic in time of peace* for the criterion of our commercial rights, in order to justify the consummation of that ruin, with which our lawful commerce is menaced by her maxims and her conduct.

This principle, therefore, cannot be a sound one.—It wants uniformity and consistency; is partial, unequal and delusive. It makes every thing bend to the rights of war; while it affects to look back to, and to recognize, the state of things in peace, as the foundation and the measure of the rights of neutrals. Professing to respect the established and habitual trade of the nations at peace, it affords no shadow of security for any part of it. Professing to be an equitable standard for the ascertainment of neutral rights, it deprives them of all body and substance, and leaves them only a plausible and unreal appearance of magnitude and importance. It delivers them over, in a word, to the mercy of the states

at war, as objects of legitimate hostility; and while it seems to define, does in fact extinguish them. Such is the faithful picture of the theory and practical operation of this doctrine.

But, independent of the considerations, thus arising out of the immediate interference, of belligerent rights, and belligerent conduct, with the freedom of neutral trade; by which the fallacy of the appeal, to the precise state of our peace-trade, as limiting the nature and extent of our trade in war, is sufficiently manifested; there are other considerations, which satisfactorily prove the utter inadmissibility of this principle.

It is impossible that war among the primary powers of Europe, should not, in an endless variety of shapes, materially affect the whole civilized world. Its operation upon the prices of labor and commodities, upon the value of money, upon exchange, upon the rates of freight and insurance, is great and important. But it does much more than all this. It imposes upon commerce, in the gross and in its details, a new character; gives to it a new direction; and places it upon new foundations. It abolishes one class of demands, creates or revives others; and diminishes or augments

the rest—and, while the wants of mankind are infinitely varied, by its powerful agency, both in object and degree; the modes and sources of supply, and the means of payment, are infinitely varied also.

To prescribe to neutral trade, thus irresistibly influenced, and changed, and moulded by this imperious agent, a fixed and unalterable station, would be to say, that it shall remain the same, when not to vary is impossible; and to require, since change is unavoidable, that it shall submit to the ruinous retrenchments and modifications, which war produces, and yet refrain from indemnifying itself by the fair advantages, which war offers to it as an equivalent, cannot be warranted by any rule of reason or equity, or by any law, to which the great community of nations owes respect and obedience.

When we examine the conduct of the maritime powers of Europe, in all the wars in which they have been engaged for upwards of a century, we find, that each of them has, occasionally departed from its schemes of colonial monopoly; relaxed its navigation-laws; and otherwise admitted neutrals, for a longer or a shorter space, as circumstances required, to modes of trade, from which they were generally excluded.

This universal practice; this constant and invariable usage, for a long series of years, would seem to have established, among the European states, a sort of customary law upon the subject of it, from which no single power could be at liberty to depart, in search of a questionable theory, at variance with it. Great-Britain is known to suspend, in war, and on account of war, her famous act of navigation, to which she is supposed to owe her maritime greatness, and which, as the palladium of her power, she holds inviolable in peace;—and her colonies are frequently thrown open, and neutrals invited to supply them, when she cannot supply them herself. She makes treaties in the midst of war, (she made such a treaty with us) by which neutrals are received into a participation of an extensive traffic, to which before they had no title. And can she be suffered to object, that the same, or analogous acts, are unlawful in her enemies; or that, when neutrals avail themselves of similar concessions made by her opponents, they are guilty or liable to punishment, as for a criminal intrusion into an irregular and prohibited commerce?

The weight of this consideration has been felt by the advocates of this doctrine; and it has, accordingly, been attempted to evade

it by a distinction, which admits the legality of all such relaxations in war, of the general, commercial, or colonial systems of the belligerents, as do not arise out of the predominance of the enemy's force, or out of any necessity resulting from it. It is apparent, however, that such relaxations, whether dictated by the actual ascertained predominance of the enemy's force, or not, do arise out of the state of war, and are almost universally produced and compelled by it—that they are intended as reliefs,—against evils, which war has brought along with it; and that the opposite belligerent has just as much right to insist, that these evils shall not be removed by neutral aid or interposition, as if they were produced by the general preponderance of her own power, upon the land, or upon the sea, or by the general success of her arms. In the one case, as completely as in the other, the interference of the neutral lightens the pressure of war; increases the capacity to bear its calamities, or the power to inflict them; and supplies the means of comfort and of strength. In both cases the practical effect is the same, and the legal consequence should be the same also. But, whence are we to derive the conclusion of fact, upon which this extraordinary distinction is made to turn? How are we to determine, with

precision and certainty, the exact cause, which opens to us the ports of a nation at war, to analyze the various circumstances, of which, perhaps, the concession may be the combined effect; and to assign to each the just portion of influence, to which it has a claim?

How easy it is to deceive ourselves, on a subject of this kind—Great-Britain will herself instruct us, by a recent example. Her courts of prize have insisted, that, during the war, which ended in the peace of Amiens; France was compelled, to open the ports of her colonies, by a necessity, created and imposed by the naval prowess of her enemies; and yet these ports were opened in February, 1793, when France and her maritime adversaries had not measured their strength in a single conflict; when no naval enterprize had been undertaken by the latter, far less crowned with success; when the lists were not even entered, and when the superiority, afterwards acquired by Great-Britain in particular, was yet a problem; when the spirit of the French nation and government was lifted up to an unexampled height, by the enthusiasm of the day, and by the splendid atchievements, by which their armies had recently conquered Savoy, the county of Nice, Worms and other places

upon the Rhine, the Austrian Low Countries, and Liege. It would seem to be next to impossible to contend that a concession made by France to neutrals, on the subject of her colony trade, at such a period of exultation and triumph, was "compelled by the prevalence of British arms*;" that it was "the fruit of British victories," or the result of "British conquest;" that it "arose out of the predominance of the enemy's force;" that it was produced by "that sort of necessity, which springs from the impossibility of otherwise providing against the urgency of distress, inflicted by the hand of a superior enemy;" and that "it was a signal of defeat and depression!" It would seem to be impossible to say of a traffic, so derived, "That it *could* obtain, or *did* "obtain, by no other title than the success "of the one belligerent against the other, "and at the expence of that very belligerent, under whose success the neutral "sets up his title." Yet all these things have been solemnly said and maintained; and have even been made the foundation of acts by which the property of our citizens has been wrested from their hands. It cannot be believed, that the laws of nations have entrusted to a belligerent, the power of harrassing the trade, and confiscating the ships and merchandise, of peaceable and

* Sir William Scott, in the Emmanuel.

friendly nations, upon grounds so vague, so indefinite, and equivocal. Of all law, *certainty* is the best feature; and no rule can be otherwise than unjust and despotic, of which the sense and the application are and must be ambiguous. A *siege* or *blockade* presents an intelligible standard, by which it may always be known, that no lawful trade can be carried on, with the places, against which either has been instituted; but the suggestions, upon which this new belligerent encroachment, having all the effect of a siege, or blockade, is founded, are absolutely incapable of a distinct form, either for the purpose of warning to neutrals, or as the basis of a judicial sentence. The neutral merchant finds, that, in fact, the colonial ports of the parties to the war, are thrown open to him, by the powers to which they belong; and he sees no hostile squadron, to shut them against him. Is he to pause, and stop before he ventures to exercise his natural right, to trade with those, who are willing to trade with him; until he has enquired and determined, *why* these ports have thus been made free to receive him? To such a complicated and delicate discussion, no nation has a right to call him. It is enough that an actual blockade can be set on foot to close these ports; and that they may be made the objects of direct efforts, for

conquest or occlusion, if the enemy's force is in truth so decidedly predominant, as it is pretended to be; and, if it is not predominant to that point, and to that extent, there can be no cause for ascribing to it an effect, to which it is physically incompetent, or for allowing it to do that constructively, which it cannot do, and has not done, actually. The pernicious qualities of this doctrine are enhanced and aggravated, as from its nature might be expected, by the fact, that Great-Britain gives no notice of the time when, or the circumstances, in which she means to apply and enforce it. Her orders of the 6th November, 1793, by which the seas were swept of our vessels and effects, were, for the first time, announced by the ships of war and privateers, by which they were carried into execution. The late decisions of her courts, which are in the true spirit of this doctrine, and are calculated to restore it in practice, to that high tone of severity, which milder decisions had almost concealed from the world, came upon us by surprize; and the captures of which the Dutch complained, in the seven years war, were preceded by no warning. Thus, is this principle, most rapacious and oppressive in all its bearings—Harsh and mysterious in itself, it has always been, and ever must be, used, to betray neutral merchants into a

trade, supposed to be lawful, and then to give them up to pillage and to ruin.—Compared with this principle, which violence and artifice may equally claim for their own, the exploded doctrine of *constructive blockade*, by which belligerents for a time insulted, and plundered the states at peace, is innocent and harmless.—That doctrine had something of certainty belonging to it, and made safety at least *possible*. But, there can be no security while a malignant and deceitful principle like this hangs over us. It is just what the belligerent chooses to make it,—lurking, unseen, and unfelt,—or, visible, active and noxious.—It may come abroad when it is least expected; and the moment of confidence, may be the moment of destruction. It may sleep for a time; but no man knows when it is to awake, to shed its baleful influence upon the commerce of the world. It cloaths itself, from season to season, in what are called "*relaxations*;" but, again, without any previous intimation to the deluded citizens of the neutral powers, these relaxations are suddenly laid aside, either in the whole, or in part, and the work of confiscation commences. Nearly ten months of the late war had elapsed before it announced itself at all; and, when it did so, it was in its most formidable shape, and in its fullest power and expansion.—In a

few weeks, it was seen to lose more than half its substance, and character; and long before the conclusion of the war, was scarcely perceptible. With the opening of the present war, it re-appeared in its mildest form, which it is again abandoning for another, more consonant to its spirit.—Such are its capricious fluctuations, that no commercial undertaking, which it can in any way affect, can be considered as otherwise than precarious, whatever may be the avowed state of the principle at the time of its commencement.

It has been said that, by embarking in the colony trade of either of the belligerents, neutral nations, in some sort, interpose in the war; since they assist, and serve, the belligerent, in whose trade they so embark.—It is a sufficient answer to this observation, that the same course of reasoning would prove, that neutrals ought to discontinue all trade whatsoever, with the parties at war. —A continuance of their *accustomed peace trade*, assists, and serves, the belligerent, with whom it is continued; and, if this effect were sufficient to make a trade unneutral, and illegal, the best established and most usual traffic, would, of course, become so. But, Great-Britain supplies us with another answer to this notion, that our

interference in the trade of the colonies of her enemies is unlawful, *because they are benefited by it.* It is known that the same trade is, and long has been, carried on by British subjects;—and your Memorialists feel themselves bound to state, that, according to authentic information lately received, the government of Great-Britain does, at this moment, grant licences to neutral vessels, taking in a proportion of their cargoes there, to proceed on trading voyages to the colonies of Spain, from which she would exclude us, upon the condition that the return cargoes shall be carried to Great-Britain, to swell the gains of her merchants, and to give her a monopoly of the commerce of the world.—This great belligerent right, then, upon which so much has been supposed to depend, sinks into an article of barter.—It is used, not as a hostile instrument, wielded by a warlike state, by which her enemies are to be wounded, or their colonies subdued, but as the selfish means of commercial aggrandizement, to the impoverishment and ruin of her friends; as an engine by which Great-Britain is to be lifted up to a vast height of prosperity, and the trade of neutrals crippled, and crushed, and destroyed. Such acts are a most intelligible commentary upon the principle in question. They shew that it is a hollow

and fallacious principle, susceptible of the worst abuse, and incapable of a just and honorable application.—They shew that in the hands of a great maritime state, it is not, in its ostensible character of a weapon of hostility, that it is prized, but rather as one of the means of establishing an unbounded monopoly, by which every enterprize, calculated to promote national wealth, and power, shall be made to begin and end in Great-Britain alone.—Such acts may well be considered as pronouncing the condemnation of the principle, against which we contend, as withdrawing from it the only pretext, upon which it is possible to rest it.

Great-Britain does not pretend that this principle has any warrant in the opinions of writers on public law.—She does not pretend, and cannot pretend, that it derives any countenance from the conduct of other nations.—She is confessedly solitary in the use of this invention, by which rapacity is systematized, and a state of neutrality and war are made substantially the same.—In this absence of all other authority, her courts have made an appeal, to her own early example, for the justification of her own recent practice.—Your Memorialists join in that appeal, as affording the most conclusive and authoritative reprobation of

the practice, which it is intended to support by it.

It would be easy to shew, by an examination of the different treaties, to which Great-Britain has been a party, from times long past, that this doctrine is a modern usurpation.—It would be equally easy to shew, that, during the greater part of the last century, her statesmen and lawyers uniformly disavowed it, either expressly or tacitly. But, it is to a review of *judicial* examples, of all others the most weighty and solemn, that your Memorialists propose to confine themselves.

In the war of 1744, in which Great-Britain had the power, if she had thought fit to exert it, to exclude the neutral states from the colony trade of France and Spain, her high court of appeals decided that the trade was lawful, and released such vessels as had been found engaged in it.

In the war which soon followed the peace of *Aix-la-Chapelle*, Great-Britain is supposed to have first acted upon the pretension, that such a trade was unlawful, as being shut against neutrals in peace. And it is certain, that, during the whole of that war, her courts of prize did condemn all neutral vessels, taken in the prosecution of that

trade, together with their cargoes, whether French or neutral. These condemnations, however, proceeded upon peculiar grounds. In the seven years war, France did not throw open to neutrals the traffic of her colonies. She established no free ports in the East, or in the West, with which foreign vessels could be admitted to trade, either generally, or occasionally, *as such.* Her first practice was simply to grant *special licences* to particular neutral vessels, principally Dutch, and commonly chartered by Frenchmen, to make, under the usual restrictions, particular trading voyages to the colonies. These *licences* furnished the British courts with a peculiar reason for condemning vessels, sailing under them, viz. "that they became in virtue of them, the *adopted or naturalized vessels of France.*" As soon as it was known, that this effect was imputed to these licences, they were discontinued, or pretended to be so; but the discontinuance, whether real or supposed, produced no change in the conduct of Great-Britain; for neutral vessels employed in this trade, were captured and condemned as before. The grounds, upon which they continued to be so captured and condemned, may best be collected from the reasons, subjoined to the printed cases, in the prize causes decided by the high court of admiralty, (in which Sir Thomas

Salisbury at that time presided) and by the lords commissioners of appeal, between 1757 and 1760.

In the case of the *America*, (which was a Dutch ship, bound from Saint Domingo to Holland, with the produce of that island, belonging to French subjects, by whom the vessel had been chartered) the reason, stated in the printed case, is, "that the ship must be looked upon as a French ship (coming from St. Domingo) for by the laws of France, no foreign ship CAN trade to the French West-Indies."

In the case of the *Snip*, the reason (as signed by Sir George Hays and Mr. Pratt, afterwards Lord Camden) is, "for that the *Snip* (though once the property of Dutchmen) being employed in carrying provisions to, and goods from, a French colony, *thereby became a French ship*, and, *as such*, was justly condemned."

It is obvious that the reason, in the case of the *America*, proceeds upon a presumption, that, as the trade was, by the standing laws of France, even up to that moment, confined to *French* ships, any ship, found employed in it, must be a *French* ship. The reason, in the other case, does not rest upon this idle presumption, but takes ano-

ther ground; for it states, that, by reason of the trade, in which the vessel was employed, she *became* a French vessel. It is manifest that this is no other than the first idea of adoption, or naturalization, accommodated to the change, attempted to be introduced into the state of things, by the actual, or pretended, discontinuance of the special licences. What then, is the amount of the doctrine of the seven years war, in the utmost extent which it is possible to ascribe to it? It is in substance, no more than this,—that, as France did not at any period of that war, abandon, or in any degree suspend, the principle of colonial monopoly, or the system arising out of it, a neutral vessel, found in the prosecution of the trade, which, according to that principle, and that system, still continuing in force, could only be a *French* trade, and open to *French* vessels, either *became*, or was legally to be *presumed* to be, a *French* vessel. It cannot be necessary to shew, that this doctrine differs essentially from the principle of the present day. But, even if it were otherwise, the practice of that war, whatsoever it might be, was undoubtedly contrary to that of the war of 1744, and as contrasted with it, will not be considered, by those who have at all attended to the history of these two periods, as entitled to any peculiar veneration. The

effects of that practice were almost wholly confined to the Dutch, who had rendered themselves extremely obnoxious to Great-Britain, by the selfish and pusillanimous policy, as it was falsely called, which enabled them during the seven years war, to profit of the troubles of the rest of Europe. In the war of 1744, the neutrality of the Dutch, while it continued, had in it nothing of complaisance to France. They furnished, from the commencement of hostilities, on account of the Pragmatic sanction, succours to the confederates, declared openly, after a time, in favor of the Queen of Hungary, and finally determined upon, and prepared for war, by sea and land. Great-Britain, of course, had no inducement, in that war, to hunt after any hostile principle, by the operation of which, the trade of the Dutch might be harrassed, or the advantages of their neutral position, while it lasted, defeated.

In the war of 1756, she had this inducement in its utmost strength. Independent of the commercial rivalry, existing between the two nations, the Dutch had excited the undisguised resentment of Great-Britain, by declining to furnish against France, the succours stipulated by treaty; by constantly supplying France with naval and warlike

stores, through the medium of a trade, systematically pursued by the people, and countenanced by the government; by granting to France, early in 1757, a free passage through Namur and Maestricht, for the provisions, ammunition and artillery belonging to the army destined to act against the territories of Prussia, in the neighborhood of the Low Countries—and by the indifference with which they saw Nieuport and Ostend put into the hands of France, by the court of Vienna, which Great-Britain represented to be contrary to the barrier treaty, and the treaty of Utrecht. Without entering into the sufficiency of these grounds of dissatisfaction, which undoubtedly had a great influence on the conduct of Great-Britain, towards the Dutch, from 1757, until the peace of 1763, it is manifest that this very dissatisfaction, little short of a disposition to open war, and frequently on the eve of producing it, takes away, in a considerable degree, from the authority of any practice, to which it may be supposed to have led, as tending to establish a rule of the public law of Europe. It may not be improper to observe, too, that the station, occupied by Great-Britain, in the seven years war, (as proud a one as any country ever did occupy) compared with that of the other European powers, was not exactly calculated to make

the measures which her resentment against Holland, or her views against France, might dictate, peculiarly respectful to the general rights of neutrals. In the north, Russia and Sweden were engaged in the confederacy against Prussia, and were of course entitled to no consideration in this respect. The government of Sweden, was, besides, weak and impotent. Denmark, it is true, took no part in the war, but she did not suffer by the practice in question. Besides, all these powers combined, would have been as nothing, against the naval strength of Great-Britain, in 1758. As to Spain, she could have no concern in this question; and, at length, became involved in the war on the side of France.—Upon the whole, in the war of 1756, Great-Britain had the power to be unjust, and irresistible temptations to abuse it. In that of 1744, her power was, perhaps, equally great, but every thing was favorable to equity and moderation. The example afforded on this subject, therefore, by the first war, has far better titles to respect, than that furnished by the last.

In the *American* war, the practice and *decisions*, on this point, followed those of the war of 1744.

The question first came before the lords of appeal, in January 1782, in the Danish

cases of the Tiger, Copenhagen, and others, captured in October 1780, and condemned in St. Kitts, in December following. The grounds upon which the captors relied for condemnation, in the *Tiger*, as set forth at the end of the respondents printed case, were: " for that the ship, having been trading to Cape-Francois, where none but French ships are allowed to carry on any traffic, and having been laden, at the time of the capture, with the produce of the French part of the island of St. Domingo, put on board at Cape-Francois, and both ship and cargo taken, confessedly coming directly from thence, must (pursuant to precedents in the like cases in the last war) to all intents and purposes, be deemed a ship and goods belonging to the French, or at least adopted and naturalized as such."

In the *Copenhagen*, the captors reasons are thus given: " First, because it is allowed " that the ship was destined, with her cargo, " to the island of *Guadaloupe*, and no other " place."

" Secondly, because it is *contrary to the* " *established rule of general law, to admit* " *any neutral ship, to go to, and trade at, a* " *port belonging to the colony of an enemy, to* " *which such neutral ships could not have* " *freely traded in time of peace.*".

On the 22d of January, 1782, these causes came on for hearing, before the lords of appeal; who decreed restitution in all of them; thus, in the most solemn and explicit manner, disavowing and rejecting the pretended rules of the law of nations, upon which the captors relied; the first of which was literally borrowed from the doctrine of the war of 1756, and the last of which is precisely that very rule, on which Great-Britain now relies.

It is true, that, in these cases, the judgment of the lords was pronounced upon one shape only of the colony trade of France, as carried on by neutrals—that is to say, a trade between the colony of France, and that of the country of the neutral shipper. But, as no distinction was supposed to exist, in point of principle, between the different modifications of the trade, and as the judgment went upon general grounds, applicable to the entire subject, we shall not be thought to overrate its effect and extent, when we represent it as a complete rejection, both of the doctrine of the seven years war, and of that modern principle by which it has been attempted to replace it. But, at any rate, the subsequent records of the same high tribunal did go that length. Without enumerating the cases of various descriptions, involving the legality of the trade in all

its modes, which were favorably adjudged by the lords of appeal, after the American peace, it will be sufficient to mention the case of the *Vervagting*, decided by them in 1785 and 1786. This was the case of a *Danish* ship, laden with a cargo of dry goods and provisions, with which she was bound on a voyage from *Marseilles* to *Martinique* and *Cape-Francois*, where she was to take in for *Europe*, a return cargo, of West-India produce. The ship was not proceeded against; but the cargo, which was claimed for merchants of *Ostend*, was condemned as enemy's property, (as in truth it was) by the vice-admiralty of *Antigua*, subject to the payment of freight, *pro rata itineris*, or rather for the whole of the outward voyage. On appeal, as to the cargo, the lords of appeal, on the 8th of March, 1785, reversed the condemnation, and ordered further proof of the property to be produced within three months. On the 28th March, 1786, no further proof having been exhibited, and the proctor for the claimants declaring, that he should exhibit none, the lords condemned the cargo; and on the same day reversed the decree below, giving freight, *pro rata itineris*, (from which the neutral master had appealed) and decreed freight generally, and the costs of the appeal.

It is impossible that a judicial opinion, could go more conclusively to the whole question on the colony trade, than this.—For it not only disavows the pretended illegality of neutral interposition in that trade, even directly between France and her colonies, (the most exceptionable form, it is said, in which that interposition could present itself) it not only denies that property engaged in such a trade is on that account liable to confiscation; (in as much as, after having reversed the condemnation of the cargo, pronounced below, it proceeds afterwards to condemn it, merely *for want of further proof as to the property)* but it holds that the trade is so unquestionably lawful to neutrals, as not even to put in jeopardy the claim to freight, for that part of the voyage, which had not yet begun, and which the party had not yet put himself in a situation to begin. The force of this, and the other British decisions, produced by the American war, will not be avoided, by suggesting, that there was any thing peculiarly favorable, in the time when, or the manner in which, France opened her colony trade to neutrals, on that occasion. Something of that sort, however, has been said. We find the following language in a very learned opinion on this point. "It is "certainly true, that in the last war (the

" American war) many decisions took place,
" which then pronounced, that such a trade,
" between France and her colonies, was not
" considered as an unneutral commerce ;—
" but under what circumstances ? It was
" understood that France, in opening her
" colonies, during the war, *declared* that this
" was not done with a temporary view, re-
" lative to the war, but on a general per-
" manent purpose of altering her colonial
" system, and of admitting foreign vessels,
" universally, and at all times, to a partici-
" pation of that commerce. Taking that to
" be the fact, (however suspicious its com-
" mencement might be, during the actual
" existence of a war) there was no ground
" to say, that neutrals were not carrying on
" a commerce, as ordinary as any other, in
" which they could be engaged ; and there-
" fore in the case of the *Vervagting*, and
" in many other succeeding cases, the lords
" decreed payment of freight to the neutral
" ship owner. It is fit to be remembered, on
" this occasion, that the conduct of France
" evinced, how little dependance can be
" placed upon explanations of measures
" adopted during the pressure of war ; for
" hardly was the ratification of the peace
" signed, when she returned to her ancient
" system of colonial monopoly." We an-
swer to all this : that to refer the decision of

the lords, in the *Vervagting*, and other succeeding cases, to the reason here assigned, is to accuse that high tribunal of acting upon a confidence, which has no example, in a singularly incredible declaration (if, indeed, such a declaration was ever made) after the utter falsehood of it had been, as this learned opinion does itself inform us, unequivocally and notoriously ascertained. We have seen that the *Vervagting* was decided by the lords in 1785 and 1786, at least two years after France had, as we are told, "returned to her ancient system of colonial monopoly," and when, of course, the supposed assertion of an intended permanent abandonment of that system, could not be permitted to produce any legal consequences. We answer farther, that if this alledged declaration was in fact made (and we must be allowed to say, that we have found no traces of it out of the opinion above recited) it never was put into such a formal and authentic shape as to be the fair subject of judicial notice. It is not contained in the French arrêts of that day, where it would be proper to look for it, and we are not referred to any other document proceeding from the government of France, in which it is said to appear.—There does not, in a word, seem to have been any thing which an enlightened tribunal could be supposed capable of

considering as a pledge on the part of France, that she had resolved upon, or even meditated, the extravagant change in her colonial system, which she is said in this opinion to have been understood to announce to the world.—But, even if the declaration in question was actually made, and that too with all possible solemnity, still it would be difficult to persuade any thinking man, that the sincerity of such a declaration, was in any degree confided in, or that any person, in any country, could regard it in any other light than as a mere artifice, that could give no right which would not equally well exist without it.

Upon the whole, it is manifestly impracticable to rest the decisions of the lords of appeal, in and after the American war, upon any dependance placed on this declaration, of which there is no evidence, that it ever was made, which, it is certain, was not authentically or formally made; which, however made, was not and could not be believed at *any* time, far less in 1785 and 1786, when its falsehood had been unquestionably proved by the public and undisguised conduct of its supposed authors, in direct opposition to it.

That *Sir James Marriott*, who sat in the high court of admiralty of Great-Britain,

during the greater part of the late war, did not consider these decisions as standing upon this ground, is evident; for, notwithstanding that in the war of 1756, he was the most zealous, and perhaps able advocate for the condemnation of the Dutch ships engaged in the colony trade of France, yet upon the breaking out of the late war, he relied upon the decisions in the American war, as authoritatively settling the legality of that trade, and decreed accordingly.

If, as a more plausible answer to these decisions, considered in the light of authorities, than that which we have just examined, it should be said that they ought rather to be viewed as reluctant sacrifices to policy, or even to necessity, under circumstances of singular difficulty and peril, than as an expression of the deliberate opinion of the lords of appeal, or the government of Great-Britain, on the matter of right, it might, perhaps, be sufficient to reply, that, if the armed neutrality, coupled with the situation of Great-Britain, as a party to the war, did in any degree compel these decisions, we might also expect to find at the same æra some relaxation on the part of that country, relative to the doctrine of contraband, upon which the convention of the armed neutrality contained the most direct stipulations,

which the Northern powers were particularly interested to enforce. Yet, such was not the fact. But, in addition to this, and other considerations of a similar description, it is natural to enquire, why it happened, that, if the lords of appeal were satisfied that Great-Britain possessed the right in question, they recorded and gave to the world, a series of decisions against it, founded, not upon British orders of council, gratuitously relaxing what was still asserted to be the strict right (as in the late war) but upon general principles of public law. However prudence might have required (although there is no reason to believe that it did require) an abstinence on the part of Great-Britain, from the extreme exercise of the right she had been supposed to claim, still it could not be necessary to give to the mere forbearance of a claim, the stamp and character of a formal admission, that the claim itself was illegal and unjust. In the late war, as often as the British government wished to concede and relax, from whatever motive, on the subject of the colony trade of her opponents, an order of council was resorted to, setting forth the nature of the concession or relaxation upon which the courts of prize were afterwards to found their sentences; and, undoubtedly sentences so passed, cannot, in any fair reason-

ing, be considered as deciding more than that the order of council is obligatory on the courts whose sentences they are. But the decrees of the lords of appeal, in and after the American war, are not of this description, since there existed no orders of council on the subject of them; and, of course, they are and ought to be of the highest weight and authority, against Great-Britain, on the questions involved in and adjudged by them.

This solemn renunciation of the principle in question, in the face of the whole world, by her highest tribunal, in matters of prize, reiterated in a succession of decrees, down to the year 1786, and afterwards, is powerfully confirmed by the acquiescence of Great-Britain, during the first, most important, and active period of the late war, in the free and unlimited prosecution, by neutrals, of the whole colony trade to France. She did indeed, at last prohibit that trade by an instruction, unprecedented, in the annals of maritime depredation, but the revival of her discarded rule, was characterised with such circumstances of iniquity and violence, as rather to heighten, by the effect of contrast, the veneration of mankind for the past justice of her tribunals.—The world has not forgot the instruction to which we

allude, and the enormities by which its true character was developed, produced in mystery, at a moment when universal confidence in the honor and integrity of her government had brought upon the ocean a prey of vast value and importance—sent abroad, to the different naval stations, with such studied secrecy, that it would almost seem to have been intended to make an experiment, how far law and honor could be outraged by a nation proverbial for respecting both; the Heralds by whom it was first announced, were the commanders of their commissioned cruizers, who at the same instant carried it into effect, with every circumstance of aggravation—if of such an act there can be an aggravation. Upon such conduct there was but one opinion. It was condemned by reason and justice—it was condemned by that law which flows from, and is founded upon them—it was condemned, and will forever continue to be condemned, by the universal voice of the civilized world. Great-Britain has made amends, with the good faith which belongs to her councils, for that act of injustice and oppression—and your Memorialists have a strong confidence that the late departure from the usual course of her policy, will be followed by a like disposition to atonement and reparation. The relations, which subsist, between Great-Britain and

the United States, rest upon the basis of reciprocal interests; and your Memorialists see in these interests, as well as in the justice of the British government, and the firmness of our own, the best reasons to expect a satisfactory answer to their complaints, and a speedy abandonment of that system, by which they have lately been harrassed and alarmed.

Your Memorialists will not trespass upon your time, with a recital of the various acts, by which our coasts, and even our ports and harbours, have been converted into scenes of violence and depredation; by which the security of our trade and property has been impaired; the rights of our territory invaded; the honor of our country insulted and humiliated; and our gallant countrymen oppressed and persecuted.—They feel it to be unnecessary to ask, that the force of the nation should be employed, in repelling and chastising the lawless freebooters, who have dared to spread their ravages, even beyond the seas, which form the principal theatre of their piratical exertions, and to infest our shores with their irregular and ferocious hostility. These are outrages which have pressed themselves, in a peculiar manner, upon the notice of our government, and cannot have failed to excite its indignation, and a correspondent disposition to prevent and redress them.

Such is the view which your Memorialists have taken, in this anxious crisis of our public affairs, of subjects, which appear to them, in an alarming degree, to affect their country, and its commerce; and to involve high questions of national honor and interest, of public law, and individual right, which imperiously demand discussion and adjustment. They do not presume to point out the measures which these great subjects may be supposed to call for. The means of redress for the past, and security for the future, are, respectfully and confidently, submitted to your wisdom. But your Memorialists cannot forbear to indulge a hope, which they would abandon with deep reluctance, that they may yet be found in amicable explanations, with those who have ventured to inflict wrongs upon us, and to advance unjust pretensions to our prejudice.

Signed by order and in behalf of the Merchants and Traders of the City of Baltimore.

*Robert Gilmor*, Chairman,
*J. A. Buchanan*,
*John Hollins*,
*James Calhoun*,
*Alexander M'Kim*,
*David Stewart*,
*Samuel Sterett*,

*William Patterson,*
*John Donnell,*
*Hugh Thompson,*
*Luke Tiernan,*
*John Swan,*
*William Lorman,*
*William Wilson,*
*Lemuel Taylor,*
*Mark Pringle,*
*Thomas Hollingsworth,*
*Thomas Tenant,*
*William Taylor,*
*John Sherlock,*
*Benjamin Williams,*
*John Stricker,*
*George Stiles,*
*Henry Payson,*
*Joseph Sterett,*
*Stewart Brown.*

Baltimore, January 21, 1806.

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